

**MINUTES  
of the  
THIRD MEETING  
of the  
CRIMINAL JUSTICE REFORM SUBCOMMITTEE  
of the  
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

**April 23, 2014  
Room 321, State Capitol  
Santa Fe**

The third meeting of the Criminal Justice Reform Subcommittee (CJRS) of the Courts, Corrections and Justice Committee was called to order by Senator Lisa A. Torracco, co-chair, on April 23, 2014 at 9:15 a.m. in Room 321 of the State Capitol.

**Present**

Rep. Antonio "Moe" Maestas, Co-Chair  
Sen. Lisa A. Torracco, Co-Chair  
Rep. Gail Chasey  
Rep. Zachary J. Cook  
Sen. Cisco McSorley  
Sen. Bill B. O'Neill  
Rep. Jane E. Powdrell-Culbert  
Sen. Sander Rue

**Absent**

**Guest Legislators**

Sen. Jacob R. Candelaria  
Sen. Daniel A. Ivey-Soto  
Sen. Richard C. Martinez

**Staff**

Douglas Carver, Staff Attorney, Legislative Council Service (LCS)  
Caela Baker, Staff Attorney, LCS  
Monica Ewing, Staff Attorney, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

Handouts and other written testimony are in the meeting file.

**Wednesday, April 23**

**Welcome and Introductions**

Members of the subcommittee and staff introduced themselves.

**Overview of Budgetary Impact of the Criminal Justice System**

Charles Sallee, deputy director, Legislative Finance Committee (LFC), introduced Dr. Jon Courtney, program evaluator, LFC; Eric Chenier, fiscal analyst, LFC; and Connor Jorgensen, fiscal analyst, LFC.

Mr. Sallee told the CJRS that one out of every 44 New Mexican adults is involved with the criminal justice system in some manner and that crime has a significant economic impact. He indicated that the LFC will be issuing a report in May that examines the use of capital outlay funding for prison facilities.

*The Cost of Incarceration and Recidivism*

Mr. Sallee reported that in fiscal year (FY) 2015, criminal justice spending will account for about 10 percent of all spending from the general fund. Criminal justice spending from the general fund is broken down as follows: \$277.4 million for the Corrections Department (NMCD); \$262.6 million for the judiciary; and \$107 million for the Department of Public Safety (DPS) and public safety programs. Further, in FY 2015, general fund appropriations for criminal justice will increase by \$25.4 million, which represents a 4.1 percent increase. The specific increases are as follows:

- ▶ \$7.2 million, or 4.7 percent, for judicial agencies;
- ▶ \$2.5 million, or 4.2 percent, for district attorneys;
- ▶ \$6.8 million, or 2.5 percent, for the NMCD;
- ▶ \$7.2 million, or 7.4 percent, for the DPS; and
- ▶ \$8.8 million for criminal justice employee salary increases.

Mr. Sallee indicated that \$226 million, or 83 percent, of the NMCD's operating budget is allocated to prisons, with about 30 percent of that paid to private prison facilities. Additional appropriations of \$2.8 million were added for FY 2015 due to projected inmate population increases. Approximately five percent of the NMCD budget is allocated for recidivism reduction programs. Since FY 2004, the NMCD's budget has increased by 37 percent. General fund appropriations peaked in 2009 at \$294.6 million — a spike that was primarily due to the prison medical contract and changes to vendors. The NMCD has since been able to bring those costs down, and appropriations decreased by 12 percent between FY 2010 and FY 2012.

In terms of prison population, Mr. Sallee indicated that there is more "near-term bed-space pressure" with the female inmate population than there is with the male inmate population. Since 1980, the inmate population in general has more than quadrupled. Yet, despite these increases, the NMCD has excess bed capacity. Specifically, as of March 31, 2014, the total

inmate count was 6,862. The NMCD has a bed capacity of 7,542, leaving an excess bed capacity of 680.

Although the inmate population has been increasing, felony case filings are down since 2008. The average cost per inmate per day continues to increase — in FY 2001, the average cost was \$29,333 per inmate, whereas in FY 2013, the average cost was \$35,631 per inmate. The average cost to house inmates differs between the public prison facilities and the privately run facilities. This is mainly due to the fact that the private prisons house mainly inexpensive, low-to-medium security inmates, whereas the public prisons house many high-security inmates, geriatric inmates and inmates with severe mental illness. Additionally, the private prison facilities tend to be more modern facilities that have lower operating costs because better security features and equipment allow the facilities to employ fewer security officers. Public prisons, on the other hand, require more intensive staffing because they frequently house inmates that are classified as being higher security risks. The Western New Mexico Correctional Facility and the Springer Correctional Facility in particular are more expensive to operate.

Mr. Sallee told the CJRS that recidivism also has substantial costs that arise from arresting, prosecuting, housing, rehabilitating and supervising offenders who return to the system, in some cases many times. The LFC estimates that based on a FY 2011 cohort of 3,440 inmates, at least 52 percent (1,720 inmates) will return to prison. Of the 1,720 inmates who return to prison:

- ▶ 41 percent (706 inmates) will return once;
- ▶ 28 percent (490 inmates) will return twice;
- ▶ 16 percent (275 inmates) will return three times; and
- ▶ 14 percent (249 inmates) will return four or more times.

Based on these data, the LFC estimates that the FY 2011 release cohort alone would cost the prison system \$360 million over the course of 15 years. Mr. Sallee indicated that the LFC takes a very conservative approach in estimating the rates of recidivism and reconviction.

Mr. Sallee indicated that recent legislation authorized the NMCD to double the caseloads for intensive supervision programs, but the legislation contained no requirement for a treatment component. He stated that larger caseloads — when they are not combined with a treatment requirement — will not reduce recidivism. Mr. Sallee further stated that the NMCD's in-prison drug treatment program was previously not being implemented as it was intended to be, but the NMCD has recently revamped the program. Mr. Sallee suggested that the CJRS might want to follow up with the monitoring team that oversees the program to see if it is being implemented appropriately.

#### *Evidence-Based Programs*

Mr. Sallee told members of the CJRS that some programs will produce a better result in terms of recidivism reduction than others. He directed the attention of subcommittee members to a chart produced by the LFC that compares the effectiveness and cost of various programs aimed

at recidivism reduction. He selected one example and told members of the CJRS that intensive supervision costs a little more than \$4,000 per participant but has not been shown to reduce recidivism. On the other hand, intensive supervision with treatment costs a little more than \$5,000 per participant but is estimated to reduce recidivism by nearly nine percent. Mr. Sallee indicated that funding was appropriated for FY 2015 to expand some of the evidence-based programs; however, some of that funding was line-item vetoed. Mr. Sallee indicated that the forthcoming NMCD budget will show how money appropriated for FY 2015 is going to be used and what portion may be allocated to evidence-based programs.

Mr. Sallee discussed the historical trends related to drug court funding, noting that the recession had an impact on such funding, specifically in the Second Judicial District. Mr. Sallee told the CJRS that drug court programs are highly effective at reducing recidivism.

#### *Cost-Saving Opportunities*

Mr. Sallee identified a cost-saving opportunity related to the current use of in-house parole. He said that about 290 inmates are currently placed on in-house parole, which is estimated to cost the state \$10.3 million in FY 2014. The average cost of using in-house parole is \$99.31 per parolee per day, whereas the cost of housing a parolee at a "halfway house" or residential treatment facility such as Dismas House New Mexico is about \$30.00 per parolee per day. Reasons for the frequent use of in-house parole are: "inmates not participating" in the parole process; administrative issues causing parole hearings to be canceled; lack of appropriate housing in the community; and lack of community-based resources.

Another cost-saving opportunity relates to savings from Medicaid expansion. Mr. Sallee stated that Medicaid will now pay for inmates inpatient hospital care after the first 24 hours of care. This is expected to save the state as much as \$15 million to \$30 million over the course of 10 years. Additionally, the expansion of Medicaid means that many behavioral health services that are currently funded by the state will be covered by Medicaid. This could save the state as much as \$2 million per year, although wrap-around behavioral health services such as inpatient rehabilitation will not be covered.

Mr. Sallee stated that when looking at savings from a reduction in inmate population, savings in some areas will be easier to capture in the budget than in others. For instance, reducing the inmate population by 10 percent will save marginal costs, but unless prisons or prison wings are closed, the state will not realize the full cost-per-day savings. The fact that New Mexico has a lot of private prisons affords a greater opportunity for cost savings. Mr. Sallee concluded by saying that the state is spending a significant amount of money on a very small subset of the population.

#### **Member Questions and Comments**

One member of the CJRS remarked that increasing the use of evidence-based programs should be a significant focus going forward. The member inquired as to whether the CJRS should examine the use of private versus state-run prisons. Mr. Sallee responded that the CJRS

might want to look at how well the private prisons are performing, including whether they are providing the programs that the state contracted for, whether the security-level classification system is being applied appropriately, whether credit for time served is being calculated correctly and whether parole plans are being crafted appropriately.

Another CJRS member inquired about the \$4 million in fines assumed in the FY 2014 budget. Mr. Sallee responded that the LFC had identified millions of dollars in uncollected potential fines under the previous NMCD administration. The recent fines were mainly the result of prisons not meeting their staffing requirements. Mr. Sallee stated that the current NMCD administration has begun collecting these fines. In the case of the Lea County Correctional Facility, contract requirements were changed.

One CJRS member commented that it appears that the private prisons have too much autonomy and that there should be additional oversight by the state. Mr. Sallee responded that the NMCD has on-site contract monitors in each of the private prisons and that the NMCD administration has established a "somewhat independent" inspector general. The inspector general is responsible for ensuring that the private prisons are complying with the terms of their contracts.

A legislator asked what the minimum permissible capacity is in the private prisons. Mr. Sallee responded that inmate populations at the private prisons can be reduced to 80 percent of bed-space capacity. The legislator responded that it would be preferable to pay for empty bed space than to incarcerate people for the sake of using up bed space. The legislator further commented that while the parole program mandates perfect compliance, mental health and drug courts work with people rather than throwing them back in prison for minor violations. The legislator indicated that electronic monitoring is a much cheaper alternative, that it should be used more often and that the state should pick up the cost rather than passing it on to the person being monitored.

CJRS members engaged in a discussion about the lack of a parole program at the federal level. One member commented that inmates released from federal prisons are released to federally operated halfway houses. Several members expressed support for a similar approach.

One member asked what percentage of the state inmate population is housed in private prisons. Mr. Chenier responded that about 49 percent of inmates are housed in private prisons. Another member inquired about the difference between the \$292.6 million budget for the NMCD in FY 2014 versus the \$277.4 million that was allocated by the state for the same fiscal year. Mr. Chenier indicated that the difference comes mostly from federal funds.

One member indicated that in the late 1990s and early 2000s, there were many halfway houses in New Mexico; however, problems such as drug dealing in the halfway houses were rampant. The member expressed concern that if additional halfway houses are created or funded, there should be oversight to ensure that specified standards are being met. The member further

indicated that the lack of quality jobs for parolees and probationers is of significant concern and should be addressed.

Members received comment from Michael Stout, chair of the Public Defender Commission. Mr. Stout indicated that funding for public defenders is an important issue that the CJRS should address. Additionally, the subcommittee should review the amount that contract public defenders are paid. According to Mr. Stout, contract public defenders are paid a flat fee, regardless of whether the case goes to trial or the number of hours spent on the case. Mr. Stout also indicated that substance abuse programs should be expanded to save the state money and that mandatory minimum sentences should be eliminated.

Several members responded that attention should be given to funding for public defenders, but that this is an issue that might be more appropriate for the full Courts, Corrections and Justice Committee.

One legislator commented that funding should be provided for intensive outpatient treatment for substance abuse and that there have been recent cuts to programs such as the Rio Arriba County DWI Prevention Program. The legislator further stated that probation and parole policies should be revamped because participants are "set up to fail" by a system that treats technical violations the same as serious infractions.

One CJRS member acknowledged the need not only to reduce prison populations but also to look at closing down prisons or prison wings, as Mr. Saltee had suggested. Mr. Saltee indicated that the state has seen success in the area of juvenile justice, with a 50 percent reduction in the population of juvenile offenders held in state facilities. Mr. Saltee indicated that the prison infrastructure in New Mexico is aging and there are significant maintenance needs. He indicated that the LFC would present information on this topic later in the interim.

Members engaged in a discussion about building and operating prisons as "an economic development initiative" and indicated that this is the wrong reason to be building or expanding prisons. One member asked how many contracts the state has with private prisons. Mr. Saltee clarified that the NMCD only has one direct contract with a private prison — the New Mexico Women's Correctional Facility in Grants ("women's prison"). The other privately operated prison facilities are run pursuant to intergovernmental agreements with counties, and the counties have contracts with private prison operators. Mr. Saltee indicated that this type of arrangement is exempt from the Procurement Code.

One member asked whether it is possible to implement an administrative rule change that would allow people to leave prison on parole, regardless of housing arrangements, if they agree to electronic monitoring. Sherry Stephens, acting executive director, New Mexico Parole Board, responded that the change must be made in statute because statute contains a housing requirement for parole plans. The change would need to create an exception for electronic monitoring in lieu of the housing requirement.

A member asked about the status of a Law Enforcement Assisted Diversion (LEAD) Program in Santa Fe County. David Schmidt, representing the Drug Policy Alliance, responded that funding for the LEAD Program was line-item vetoed by the governor. Several of the members asked if there was an explanation for the veto. Mr. Schmidt responded that there was no veto message. Santa Fe County is moving forward with the program with funding from the city, the county and the First Judicial District Attorney's Office. LEAD is a substance abuse program aimed at reducing the number of inmates in the county jail.

### **Next Steps — Focus Areas for Criminal Justice Reform, Part I**

Members of the CJRS discussed their vision for the CJRS and the work that it should accomplish.

One member indicated that the reforms that were passed and implemented in South Dakota could serve as a model for reform in New Mexico, but that the CJRS should focus particular attention on ensuring that evidence-based programs are implemented. The member indicated that the efforts in South Dakota to allow Native American tribal members to complete parole on their own reservations should be emulated in New Mexico and that there also should be emphasis on reforming substance abuse and mental health programs as they relate to the criminal justice system.

Several members inquired as to whether The Pew Charitable Trusts would be involved in the reform efforts in New Mexico. Mr. Carver told members of the CJRS that the Pew-MacArthur Results First Initiative is already working with the LFC to analyze data, but that the Justice Reinvestment Initiative of The Pew Charitable Trusts had already committed to assist other states during 2014, though they were open to the possibility of working with New Mexico in 2015.

Members discussed whether the CJRS should address law enforcement training requirements. One member indicated that the CJRS was formed to address inconsistencies in the Criminal Code.

### **Public Comment**

The CJRS accepted limited public comment from a member of the public who was unable to attend the afternoon portion of the meeting.

Valerie Romero told the CJRS that she had been incarcerated at the women's prison in Grants and had participated in the parole and probation programs. She appealed to members of the CJRS to be sensitive to the fact that they are dealing with individuals and that any reforms the subcommittee pursues will have an impact on individuals. She emphasized the need for behavioral health programs and oversight of the NMCD.

### **Expansion to the Women's Prison; Use of In-House Parole**

Bette Fleishman, executive director, New Mexico Women's Justice Project (WJP), told the CJRS that the NMCD had recently published a new request for proposals (RFP) for additional bed space at the women's prison. She indicated that the WJP is concerned about the assumption that the women's prison population will continue to increase.

Ms. Fleishman told members of the CJRS that 25 percent of children who are in foster care have at least one parent incarcerated. Further, 27 percent of incarcerated women had at least one parent incarcerated. She indicated that 77 percent of inmates at the women's prison suffer from behavioral health issues, which is above the national average.

Ms. Fleishman asked the CJRS to consider that women are incarcerated for different reasons than men. In many cases, drug and property crimes are the main causes of women being incarcerated. Additionally, many incarcerated women have posttraumatic stress disorder or were victimized during childhood. In 2012, drug and property crimes accounted for 71.3 percent of prison admissions in New Mexico.

Ms. Fleishman requested that the CJRS examine the parole system and consider reforming it. Additionally, she suggested that in-house parole should be eliminated.

Marcia Wilson, a member of the WJP, told members that the New Mexico Sentencing Commission is projecting an increase in the women's prison population and that about one-half of new admissions are the result of parole violations. She further stated that in FY 2012, 23 percent of cases sent to the New Mexico Parole Board were not ready to be heard because the files were missing documentation or were not ready for hearing for other reasons; in FY 2013, the number increased to 33 percent.

K.C. Quirk, executive director of Crossroads for Women, told members of the CJRS that there is a lack of services and housing for people who are leaving prison. Crossroads for Women operates 30 apartment units for women and their children throughout Albuquerque; however, there is a waiting list for housing. Meanwhile, funding for Crossroads for Women has been cut. She stated that safe housing for women being released from prison is particularly hard to find because many potential housing options exclude persons with felony convictions. Ms. Quirk further stated that women do not have access to the same type of educational programs that men have in prison. She cited heating, ventilation and air conditioning and automotive classes as examples.

### **Approval of Minutes**

Members of the CJRS voted unanimously to approve the minutes of the subcommittee's December 2013 meeting.



### **Criminal Justice and Behavioral Health: The Sequential Intercept Model**

Dave Webster, co-clinical director, St. Martin's Hospitality Center, told the CJRS that the Sequential Intercept Model could provide a framework for the subcommittee's work plan, particularly if the CJRS is interested in looking at the intersection of the criminal justice system and behavioral health. He explained that the model allows for five "intercept points" in the criminal justice continuum. The intercept points are:

- ▶ law enforcement (Intercept 1);
- ▶ initial detention/initial court hearing (Intercept 2);
- ▶ jails/courts (Intercept 3);
- ▶ reentry (Intercept 4); and
- ▶ community corrections (Intercept 5).

Mr. Webster indicated that areas of New Mexico, such as Albuquerque, already have in place some of the items in Intercept 3. For instance, New Mexico has some specialty courts; these specialty courts, however, are limited by a lack of funding and an increasing volume of cases.

A CJRS member asked what type of programs would be included in Intercept 2. Mr. Webster explained that Intercept 2 may involve a pretrial diversion program that would divert eligible offenders into a specialty court. He indicated that in some cases, funding from the federal Substance Abuse and Mental Health Services Administration may be available for establishing these types of programs.

Mr. Webster told the CJRS that the criminal justice system was not designed to be a treatment system for people with severe mental health or substance abuse issues. He explained that people with substance abuse or mental health issues often come into contact with law enforcement repeatedly and that lawmakers should be looking at how to keep these people from entering the system to begin with. Mr. Webster told the CJRS that a jail sentence is not a deterrent for people with mental health issues because they do not possess the intent to commit a crime — they commit crimes because they are mentally ill. Similarly, a jail sentence is often not a deterrent for substance abusers because substance abusers commit crimes in order to satisfy their drug addiction and do not contemplate the consequences.

Barri Roberts, executive director of the Bernalillo County Forensic Intervention Consortium, told the CJRS that the consortium could look at the Sequential Intercept Model in the context of Bernalillo County and tell the subcommittee what is already in place, what should be done and what it would cost.

A legislator commented that the Second Judicial District Court operates a "homeless court", which is a type of specialty court that is consistent with the Sequential Intercept Model. The court affords homeless individuals the opportunity to have charges for certain crimes dropped in exchange for agreeing to participate in certain services or treatment programs.

## **Next Steps — Focus Areas for Criminal Justice Reform, Part II**

Members resumed their discussion about the topics that the subcommittee should focus on during the upcoming interim, including:

- ▶ earned meritorious deductions;
- ▶ treatment in lieu of incarceration;
- ▶ expungement;
- ▶ pre-arrest diversion programs;
- ▶ substance abuse treatment programs;
- ▶ an overhaul of the probation and parole system;
- ▶ adjusting the penalties for some crimes;
- ▶ sentencing reform;
- ▶ implementation of cost-effective and evidence-based programs;
- ▶ the intersection of criminal justice and behavioral health;
- ▶ housing;
- ▶ collateral consequences, such as the effect of a felony conviction on voting and Second Amendment rights; and
- ▶ creation of a higher level misdemeanor — such as a gross misdemeanor — to replace the penalty for some existing fourth degree felony crimes.

## **Public Comment**

Melissa Hill, legislative chair, New Mexico Criminal Defense Lawyers Association (NMCDLA), stated that the NMCDLA strongly supports efforts to amend the Public Defender Act to prohibit flat-fee contracts in criminal cases and to require payment of reasonable hourly rates; eliminate the mandatory real time GPS monitoring for sex offender parolees; eliminate all mandatory sentencing laws; create treatment alternatives to incarceration; and require fiscal impact reports for any legislation that would create a new crime or expand an existing crime.

Margarita Sanchez urged the CJRS to address behavioral health and substance abuse issues by providing an alternative to calling 911 and by providing alternatives to incarceration. Additionally, she expressed concern about the proposed expansion of the women's prison; the lack of quality jobs for people released from prison; the unavailability of food stamps and Section 8 housing for felons; and the use of solitary confinement.

Bedajii Kunkowski, executive director, Make a Difference in New Mexico, told the CJRS that she is concerned that although the number of prison admissions in New Mexico is trending downward, there is an upward trend in the time to release inmates. Additionally, she expressed concern about the operation of private prisons and the proposed expansion of the women's prison.

Alan Wagman stated that the use of mandatory sentencing should be reviewed because it does not deter crime and it takes away discretion from judges who might choose to mandate treatment in lieu of incarceration or impose other alternative sentencing options.

Channah Israel stated that her husband is serving a life sentence, and she opposes the elimination of conjugal visits. She believes that elimination of conjugal visits will violate her Fourteenth Amendment rights and will harm families and children of persons who are incarcerated.

Jim Jackson, Disability Rights New Mexico, expressed support for the expansion of specialty courts; recommended removing district attorneys from the civil commitment process; stated that the use of solitary confinement needs to be reviewed, particularly as it is applied to people with behavioral health issues; and explained that some crimes that carry particularly lengthy minimum sentences are disproportionately committed by people with behavioral health issues. He also suggested that the CJRS review statutes concerning incarceration of people who are not competent and who cannot be treated to competency.

Frances Madeson expressed concern about expansion of the women's prison and stated that the secretary of corrections should withdraw the RFP for the women's prison.

Steve Allen, director of public policy, American Civil Liberties Union of New Mexico, expressed concern that the federal Prison Rape Elimination Act does not apply to parole and indicated that the CJRS should consider similar legislation related to parole.

Juliana Koob told the CJRS that prisons and detention centers must be in compliance with the Prison Rape Elimination Act by August, which is when the first audit will take place. She indicated the need for data on how many inmates are able to safely report sexual assault, as well as whether rape kits are being processed.

Francine DiGiorgio told the CJRS that she is a victim of abuse and violence, has been in and out of the prison system and suffers from behavioral health issues. She indicated that behavioral health issues often start early and that services should be provided for school-age children. She further indicated that mental health problems and drug addiction often go hand in hand.

Lisa Weisenfeld, policy coordinator, New Mexico Coalition Against Domestic Violence, expressed support for the work of the CJRS.

Lynne Gentry-Wood, executive director, Domestic Violence Resource Center, asked the CJRS to examine domestic violence issues and crimes against children, which she indicated are often closely linked.

### **Upcoming Meetings**

Members of the CJRS agreed to meet again on May 28, 2014 and June 25, 2014.

### **Adjournment**

There being no further business before the subcommittee, the third meeting of the CJRS of the Courts, Corrections and Justice Committee adjourned at 5:05 p.m.